

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRIANA MARIE ROE, Minor.

DONALD SANTILLI and ANN SANTILLI,

Petitioner-Appellees,

v

DANIEL REY CHANDLER,

Respondent,

and

JENNIFER ROE,

Respondent-Appellant.

UNPUBLISHED

May 22, 2001

No. 228881

Macomb Circuit Court

Family Division

LC No. 96-043060-NA

Before: Doctoroff, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Respondent, Jennifer Roe, appeals as of right from the family court's order terminating her parental rights to minor child, Briana Marie Roe.¹ We affirm.

I. Facts and Proceedings

In August 1996, respondent's neighbor called the Chesterfield Police Department after respondent told him that she could no longer care for her daughter Briana, born August 16, 1995.

¹ The court also terminated the parental rights of Briana's father, Daniel Rey Chandler. The record reflects that Chandler did not contribute to Briana's upbringing financially or otherwise. When these proceedings began, Chandler was incarcerated in Ionia State Prison, but was released in 1998. Thereafter, Chandler did not appear at the termination hearings and did not contest the termination petition. Accordingly, the court entered a default judgment against him on June 21, 2000, and Chandler has not appealed.

The neighbor told authorities that Briana stood next to her mother, screaming and appeared to be suffering from chicken pox. When police arrived, respondent, then seventeen years old, said she had not taken Briana to the doctor and she could not recall the last time she fed Briana, though there appeared to be food in the house. Respondent asked the police to take Briana and reiterated that she could no longer take care of her.

The police officers took respondent and Briana to St. Joseph Mercy Hospital East. Respondent displayed confusion and disorientation, she could not name Briana's father and could not relate any information about her family members. Respondent again said she could not take care of Briana and her examining doctor concluded that respondent needed a psychiatric evaluation. Respondent's doctor transferred her to Arborview Hospital for psychiatric care and authorities placed Briana in temporary foster care.

Following this incident, Family Independence Agency (FIA) case worker, Laura Schott, filed a petition to take temporary custody of Briana based on allegations of neglect, respondent's statements regarding her inability to care for Briana and respondent's psychiatric problems. Following a hearing on September 3, 1996, Macomb Probate Court Judge Pamela Gilbert O'Sullivan entered an order which authorized the petition and placed Briana with FIA.

On November 27, 1996, the court established a limited guardianship for Briana with respondent's consent. The court designated respondent's mother, Janet Kingstrom, as Briana's limited guardian. Respondent filed a petition to terminate the limited guardianship on June 5, 1997. Prior to an investigation of respondent's request, however, the Sterling Heights Police petitioned for respondent's commitment to a psychiatric hospital. Respondent voluntarily dismissed the petition while she underwent treatment at St. Joseph Mercy Hospital, but re-filed her petition on September 24, 1997. Respondent maintained that she filed the petition because she wanted more contact with Briana; however, evidence also showed that Child Protective Services intervened in the guardianship and that Kingstrom and her boyfriend no longer had a place to live. Thereafter, and with respondent's consent, the court replaced Kingstrom with successor limited co-guardians, Donald and Ann Santilli on October 1, 1997.²

In December 1997, Ann Santilli noticed vaginal redness and tenderness on Briana after she visited with respondent. Santilli took Briana to the emergency room twice after noticing these irregularities. One doctor diagnosed Briana with a urinary tract infection and warned Santilli that if she brought Briana back in that condition, he would report her to Child Protective Services for sexual abuse. The guardianship case worker, Janice Bentley, instructed Santilli not to allow Briana to leave with respondent and to allow visitation only at her home. Briana's therapist, Laura Henderson, testified that Briana showed signs of physical and possible sexual

² According to trial testimony, Kingstrom's boyfriend, Gordon, is Ann Santilli's cousin. When Kingstrom had guardianship of Briana, Gordon and Kingstrom asked the Santillis to baby-sit Briana on weekends and then for longer periods of time. Ann Santilli testified that the two made clear that taking care of Briana was "cramping their lifestyle" and that, ultimately, they could not provide a home for her. At that time, and following her hospitalization, respondent was living in an Adult Foster Care Home. Respondent agreed to the transfer and, thereafter, the Santilli's cared for Briana in their home.

abuse. Henderson reported this to Child Protective Services and the agency conducted a sexual abuse investigation. The investigation did not result in criminal charges and the case was later dropped because Briana could not adequately verbalize what abuse, if any, occurred.

Respondent filed a petition to terminate the Santillis' limited guardianship on January 1, 1998. At a hearing on March 18, 1998, the Macomb Probate Court entered a transition order which set forth conditions for respondent to fulfill to regain custody of Briana. The order required that respondent (1) attend and complete parenting classes, (2) establish a suitable home and demonstrate a financial ability to provide for Briana, (3) undergo a psychological examination, (4) follow through with recommended counseling and (5) attend supervised visits with Briana. The date for completion of the transition was set for June 24, 1998.

On February 24, 1999, the court dismissed respondent's petition to terminate the guardianship and set aside the transition plan because respondent failed to make progress toward fulfilling its conditions. On February 15, 2000, Donald and Ann Santilli filed a petition to terminate respondent's parental rights, which alleged neglect and a failure to fulfill the transition order. Following a bench trial, the court entered an order terminating respondent's parental rights pursuant to MCL 712A.19b(3)(d); MSA 27.3178(598.19b)(3)(d) and MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j).

II. Analysis

Respondent contends that clear and convincing evidence did not support the court's termination decision under either statutory ground.

In a termination hearing, the petitioner bears the burden of proving by clear and convincing evidence at least one statutory basis for termination. MCR 5.974(F)(3); *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once a statutory basis for termination is shown, the trial court must terminate the respondent's parental rights unless it finds that termination of those rights is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*, 462 Mich 341, 354; 612 NW2d 407 (2000).

This Court reviews a trial court's termination decision for clear error. MCR 5.974(I); *Trejo, supra*, 462 Mich 356-357. A decision is clearly erroneous if although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(d); MSA 27.3178(598.19b)(3)(d) and MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(d) The child's parent has placed the child in a limited guardianship under section 424a of the revised probate code, 1978 PA 642, MCL 700.424a, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 424a of the revised probate code, 1978 PA 642, MCL 700.424a, or section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

As discussed above, on March 18, 1998, the court entered a transition plan for respondent to regain custody of Briana after she placed Briana in the limited guardianship with Kingstrom and then with the Santillis. Clear and convincing evidence showed that respondent failed to fulfill the terms of the plan.

Respondent failed to secure adequate housing for Briana. During the transition period and the months surrounding that time, respondent lived with various friends and family members, generally sleeping on living room floors. At times, respondent also stayed in a psychiatric hospital and lived for a time in a foster care facility for mentally ill adults. Guardianship caseworker Janice Bentley testified that she inspected respondent's various addresses and found them inadequate. At the termination hearing, more than two years after the court entered the transition order, respondent testified that she lived at her father's house. Bentley testified that respondent was sleeping on his living room floor, but respondent maintained that, by April 2000, she had her own room in the house. Despite this conflicting testimony at the termination hearing, it is clear that respondent did not maintain suitable housing during the plan period and that she had a history of moving frequently from one address to another. Furthermore, inspections of respondent's housing revealed an inadequate amount of space for Briana and no bed in which she could sleep.

By the end of the transition period, respondent did not demonstrate a financial ability to maintain housing or to support Briana. During the termination hearing, which was, again, more than two years after the original transition order, respondent testified that she worked consistently during the proceedings. Nonetheless, respondent offered inconsistent testimony regarding the locations and lengths of time she worked and did not substantiate her employment history. Moreover, evidence showed that the court set aside the transition plan in February 1999 partly because respondent remained unemployed and had not shown any financial ability to support her child.

Respondent completed parenting classes and provided verification of that completion in February 1999. Further, respondent underwent a psychological evaluation, as required by the transition order, and she received other treatment at various times pursuant to her psychiatric hospitalizations. Doctors diagnosed respondent with a psychotic disorder without specific causation and later with a schizo-affective disorder. Doctors prescribed Zoloft and Respiradol

for respondent, but respondent and others testified that she did not take her medication consistently. Further evidence revealed that respondent did not believe she needed psychiatric intervention. Respondent's psychologist recommended that she undergo counseling, but she attended only one session. Respondent gave various reasons for not following through with counseling; she said she did not know the transition plan required counseling, she said she was never told she needed counseling, and she maintained that she could not afford counseling. However, others testified that respondent understood the transition order requirements and that she simply did not follow through with counseling.

Regarding visitation, respondent's plan included one visit per week at the Santilli's home for up to three hours per visit. Ann Santilli testified that, initially, respondent did not follow any scheduled visitation and would simply appear for visits approximately once every two weeks. As the transition period continued, the Santillis allowed respondent to visit with Briana often and for long periods of time. However, according to Ann Santilli, as time passed, respondent's behavior became so hostile and disruptive that case workers recommended that visitation occur outside the Santilli home.

Respondent's visits were ultimately suspended on June 24, 1998, because of the ongoing Child Protective Services investigation of allegations of sexual abuse and because Ann Santilli reported threatening and inappropriate behavior by respondent during visits. Specifically, Ann Santilli testified that, during one visit at Metro Beach, she explained to respondent that they needed to establish regular, weekly visits because their meetings were too sporadic and disruptive. Santilli further testified that, in response, respondent made hostile and threatening remarks, used profanity in front of Briana and attempted to provoke Santilli to fight. Santilli also stated that respondent approached her as though respondent might strike her. Santilli feared for her safety, took Briana home and later filed a police report about the incident. The court suspended respondent's parenting time and respondent stopped seeing Briana altogether.

The above facts constitute clear and convincing evidence that respondent failed to comply with the placement and transition plan. Although respondent eventually completed parenting classes and did undergo a psychiatric evaluation, the court had little choice but to set aside the transition order for lack of progress. As of February 1999, (1) respondent suffered numerous psychiatric episodes, (2) was periodically hospitalized for mental illness, (3) maintained no permanent address, preferring instead to stay for short periods of time with various friends and relatives, (4) could not verify her employment, and (5) did not participate in counseling or take her medications. Indeed, respondent made so little progress with the plan after it was in place for a year, that the court determined it was futile to continue. Respondent established the original guardianship in October 1999 and, 2 ½ years later, she made no progress in establishing her ability to resume Briana's care and custody. Furthermore, respondent's behavior and lack of progress with the transition order so disrupted the parent-child relationship, that respondent was no longer permitted to visit.

Respondent argues that she failed to fulfill the terms of the plan because no one offered her the necessary help and referrals. This is contrary to the evidence. Janice Bentley testified that she referred respondent for parenting classes, for her psychological evaluation and for other Oakland County resources, including community mental health services. Respondent was also

under hospital care and received prescriptions for medication to control her psychiatric condition. Moreover, the Santillis offered to pay for respondent's counseling. Despite the severity of her mental condition and these multiple offers of help, respondent stopped taking her medication and did not pursue further psychiatric care.

It is also clear that respondent chose to maintain a transient lifestyle, and made no effort to establish a home for Briana with any of the several friends or relatives with whom she stayed. Respondent's caseworker explained to respondent that Briana needed a certain amount of space and a bed of her own. Despite this information, and although she appeared to have the option of living at various homes, respondent continued to sleep on floors and failed to maintain a consistent address.

In light of this evidence, we find no merit to respondent's argument that her failure to fulfill the terms of the plan was the fault of the probate court. Moreover, the court did not clearly err in finding clear and convincing evidence that respondent failed to fulfill the terms of the transition plan pursuant to MCL 712A.19b(3)(d).

Although the court needed only to find clear and convincing evidence to support one statutory ground for termination, the court also terminated respondent's parental rights under MCL 712A.19b(3)(j) because, based on respondent's conduct and capacity, there is a reasonable likelihood that Briana would be harmed if returned to her home.

In addition to the very troubling allegations of sexual abuse by respondent, her inability to care for Briana was evident throughout these proceedings. When Briana was removed from respondent's care in 1996, she suffered from untreated chicken pox and respondent could not remember when Briana last ate. When the Santillis began caring for her, Briana was malnourished, frail, and sickly. Respondent had not weaned Briana from a bottle, Briana refused to eat and was not toilet trained. Further, Briana was ill-behaved, did not respond to direction or discipline, had continual temper tantrums, bit, kicked, displayed physical and sexual aggressiveness, and demonstrated an unusual fear of others.

Ann Santilli testified that, although Briana's behavior improved after living with the Santillis for a time, she consistently reverted to her prior behavior after respondent's visits. Respondent made clear to Santilli that she did not believe in disciplining Briana and, during her visits, respondent goaded Briana into misbehaving. In addition to encouraging bad behavior and using profanity and threatening language in front of her, respondent let Briana draw on herself with markers and fed Briana chocolate after learning that she was severely allergic to it.

Moreover, evidence clearly showed no bond between respondent and Briana. Although respondent expressed an interest in reestablishing custody, during her visits with Briana, respondent paid little attention to her and showed little to no interest in her well-being. Furthermore, Briana expressed a significant amount of fear and animosity toward respondent and did not look forward to her visits. In fact, Briana began referring to Ann Santilli as her mother immediately, again suggesting that respondent failed to establish any parent-child bond with Briana.

In sum, respondent's proactive effort to foster harmful and disruptive behavior by Briana, her lack of concern for Briana's health and upbringing, and the allegations of sexual abuse constitutes overwhelming evidence of the likelihood that Briana would be harmed if returned to respondent's care. Whether respondent's actions stem from a psychotic illness or a stunning lack of maturity, evidence suggests that Briana would be in grave danger if left in respondent's care, particularly in light of her refusal to take her medication or to obtain consistent psychiatric care. For those reasons, we find no clear error in the trial court's termination under this statutory ground.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Henry William Saad
/s/ Kurtis T. Wilder